



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**Docket No. FTA-2016-0005**

### **Notice of Proposed Buy America Waiver for Special Trackwork Turnout Switch Components.**

**AGENCY: Federal Transit Administration, DOT.**

**ACTION: Notice of Proposed Buy America waiver and request for comment.**

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**SUMMARY:** The Federal Transit Administration (FTA) received a request from the Detroit Transportation Corporation (DTC) for a Buy America non-availability waiver for the procurement of two special trackwork turnout switch components (switch). The existing switches were installed as original equipment in 1987 and designed to European standards, using AREMA 115RE rail throughout the turnout with a special 60E1A1 switch point section. The proper operation of the switch is essential for the continued, safe operations of DTC vehicles. DTC seeks a waiver for the switch because there are no domestic manufacturers of the switch. In addition, European design and the proprietary nature of the equipment means that alternative proposers would need to first familiarize themselves with European standards, design, construction, and installation procedures to provide a replacement switch. DTC issued two requests for proposals (RFPs) for procurement of the switch, and received only one proposal, which was not Buy America-complaint. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply for the switch identified in the waiver request.

**DATES:** Comments must be received by [INSERT DATE 7 DAYS AFTER PUBLICATION].

Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2016-0005:

1. Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. Fax: (202) 493-2251.
3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2016-0005. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or [Laura.Ames@dot.gov](mailto:Laura.Ames@dot.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant a Buy America non-availability waiver for the Detroit Transportation Corporation (DTC) for the procurement of replacement special trackwork turnout switch components. On July 13, 2015, DTC requested a Buy America waiver for the switch because it is not produced in the United States in sufficiently and reasonably available quantities or of a satisfactory quality. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

By way of background, DTC is the owner and operator of the Detroit People Mover, which is the largest municipal rail system in Michigan. It is a fully automated light rail system that operates twelve (12) rail cars between thirteen (13) passenger stations on an elevated single track in a 2.9 mile loop in Detroit's central business district. In March 2015, DTC solicited bids to procure special trackwork switch point for Turnout 3, which is located adjacent to the Maintenance Facility Building and provides access to the building. The special trackwork of concern was originally procured from Germany (by Krupp Stahl AG) and is of European standards, using AREMA 115RE rail throughout the turnout with special 60E1A1 (formerly Zu-160) track point section. The project includes replacing stock rails that connect the switch point section to the original running rails, as well as rubber pads; both the rails and pads will be sourced domestically. The waiver only applies to the switch component of the project.

DTC issued the first RFP in March 2015 to thirteen (13) companies: Atlantic Track & Turnout Co.; LB Foster Co.; Cleveland Track Materials (Vossloh); Progress Rail Services Corp.; Unitrac Railroad Materials, Inc.; London Trackwork, Inc.; Skelton; Voestalpine Nortrak, Inc.; RailWorks Projects, Inc.; All American Track; Construction Data Company; IntegriCo Composites; and Delta Railroad Construction, Inc. DTC received no responses. It contacted all the companies, and reissued the RFP in May 2015 to six (6) firms that expressed an interest in

the project. From this RFP, DTC only received one proposal, from Delta Railroad Construction, Inc. (Delta). Delta, however, cannot comply with Buy America requirements because the only manufacturer of the switch is a German company. To change the manufacturer, Delta would need to re-engineer the switch and modify the “frog” section and guideway elements; this design would need to be certified. Delta would then need to locate a domestic source to manufacture the re-engineered switch. Upon installation, the proprietary software designer of the automated control train system would need to certify the switch’s performance in order to ensure it could be safely used with the existing guideway switch machines. Moreover, DTC believes there is inadequate competition for the project and needs to move forward with this important maintenance project. Thus, DTC is seeking a Buy America non-availability waiver under 49 CFR 661.7(c)(1) for the switch.

With certain exceptions, FTA’s Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) all of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). Under 49 CFR 661.7(c)(1), “It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is

received offering an item produced in the United States.” In addition, “If the Secretary denies an application for a waiver ... the Secretary shall provide to the applicant a written certification that - the steel, iron, or manufactured goods, as applicable, (referred to in this subparagraph as the ‘item’) is produced in the United States in a sufficient and reasonably available amount; (i) the item produced in the United States is of a satisfactory quality; and (ii) includes a list of known manufacturers in the United States from which the item can be obtained.” 49 U.S.C. 5323(j)(6).

The purpose of this notice is to publish DTC’s request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the merits of the request. A full copy of the request has been placed in docket number FTA-2016-0005.

Issued on March 16, 2016.

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Dana Nifosi  
Deputy Chief Counsel

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